

Appl. No. : **09/847,759**
Filed : **May 2, 2001**

REMARKS

Claims 1-16, 20, 22-24, 26-35, 56, 57, and 59-61 remain pending in the present Application, Claims 1, 5, 9, 14, 20, 29, 30, 56, 57, and 60 having been amended, and Claims 17-19, 36-55, 58, and 62-69 having been canceled. The changes to the claims set forth above include to show additions and [to show deletions] relative to the issued patent, U.S. Patent No. 6,044,983.

In response to the Office Action dated September 21, 2009, Applicant respectfully requests reconsideration of the above-identified application in view of the above amendments and the following comments.

Drawing Objections

The drawings stand objected to based on certain informalities. In response, Applicant has amended the drawings in order to comply with the outstanding objections.

With regard to the objection to the drawings based on the depiction of support legs 22a, framework 22b, and panel 10e in Figures 3 and 5, Applicant has amended these figures as suggested by the Examiner.

As to the objection to the drawings that the length of the rearward most support leg 22a is not proper since it is shorter than the other two support legs 22a, Applicant is unclear on which figures the Examiner bases this objection. The rearward most support leg 22a in combination with the other two support legs 22a is not shown in Figures 3 and 5, since those figures show front and rear elevational views of the embodiment of Figure 1. *See* Amendment filed September 5, 2006, page 2. On the other hand, the rearward most support leg 22a and the other two support legs 22a are shown in Figures 1 and 6, so Applicant assumes Examiner bases the objections on those figures. In response, Applicant respectfully directs the Examiner to Col. 3, lines 3-4 of the Specification, which states that “the support legs may have unequal lengths.” Accordingly, Applicant respectfully submits the support legs 22a as shown in Figures 1 and 6 are proper and that the present objection is moot.

In response to the objection to the drawings that Figure 4 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated, Applicant has amended Figure 4 to include such a legend.

Appl. No. : **09/847,759**
Filed : **May 2, 2001**

With regard to the objection to the drawings based on the lack of reference signs 12' and 14', as added by the October 6, 2008 Amendment, Applicant has amended Figure 6 to include these reference signs.

The Specification Amendments Fully Comply With 35 U.S.C. § 132(a)

The Amendments filed March 1, 2004, October 6, 2008, and August 18, 2009 stand objected to under U.S.C. § 132(a) because they introduce new matter into the disclosure. Applicant respectfully traverses the present objections for at least the reason that one of ordinary skill in the art would recognize that all the changes made to the Specification through the course of the present Reissue Application were merely formalistic in nature and more fully supported by the original Specification as originally filed.

With regard to the objection that the threaded fasteners 15 extending through the panels 10e and 10f, as shown in Figure 3, constitute new matter for the stated reason that the specification does not support the holes themselves being threaded, Applicant respectfully traverses. Applicant respectfully directs the Examiner to Col. 2, lines 56-64 of the Specification, which state:

However, in view of the framework at 22b described below, it would be equivalent in another embodiment (not shown) to have the shelf at 16 fastened under the other structure to hang the framework under the other structure, the shelf at 16 in such an arrangement also being considered herein as superimposed relative to the other structure. For example, the panels 10e, 10f could have holes (not shown) for threaded fasteners to a cooler shelf.

Further, Applicant submits that no threads at all are shown in any of the drawings. Instead, the threaded fasteners are represented schematically.

Thus, Applicant submits that there is no basis whatsoever for any new matter rejection. Instead, it appears that the Examiner's position is that figure 3 adds new matter by *inherency*.

Nothing in the MPEP provides for a new matter rejection based on the addition of new matter by inherency. Further, even if there were such a rule, Applicant submits that the schematic drawing of Figure 3 does not necessarily disclose threaded holes in the plates. Rather, the schematic representation of Figure 3 is *generic* to threaded fasteners that cooperate with threads

Appl. No. : **09/847,759**
Filed : **May 2, 2001**

on the plate or additional *threaded nuts*, neither of which are disclosed **or claimed** in the present application.

Applicant thus submits that no new matter has been introduced by Figure 3. Thus, Applicant respectfully requests the current objection be withdrawn.

With regard to the objection that the “plate structure” on top of the shelf 16’ lacks support, Applicant respectfully traverses. Applicant directs the Examiner to the amendment filed August 18, 2009, which included an amendment to the Specification specifically regarding Figure 6. As a convenience to the Examiner, Applicant has reproduced below the Amendment submitted on August 18, 2009, in which the Specification was amended to describe Figure 6, as follows:

After line 29, column 2, please delete the previously added paragraph at this position and please add the following new paragraph:

FIG. 6 is a top, front, and right-side perspective view of the embodiment of Figure 1 hanging from a shelf.

Applicant respectfully submits that the “plate structure” on which the present objection is based is the shelf from which the embodiment of Figure 1 is shown hanging. Support for hanging the embodiment of Figure 1 from a shelf is at least at col. 2, lines 54-64 of the Specification. Further, Applicant wishes to remind the Examiner that during one of the past interview, the Examiner himself requested this drawing to be added to the application, against the Applicant’s counsel’s apprehension that such a drawing would raise the probability of a new matter rejection. Thus, Applicant submits the present objection is moot.

With regard to objection that the hexagonally shaped fasteners shown in Figure 6 lack support in the disclosure and that the “length [of the] shelf would be greater than width of the shelf,” without addressing the merits of these objections, in order to expedite prosecution Applicant has amended Figure 6 to remove the hexagonally-shaped fasteners and to schematically depict the extended width of the shelf.

With regard to the objection to the recitation of “a spacing defined between the upper ends of the second pair of support legs and the rearward portion of the support assembly sized so as to allow beverage containers to be inserted between a rear portion of the shelf and the rearward portion of the support assembly” of Claims 20, 30, and 33 as lacking support in the Specification,

Appl. No. : **09/847,759**
Filed : **May 2, 2001**

Applicant respectfully traverses. First, as stated in the present Office Action, the Specification discloses insertion of cans at the rear of the rack. *See* Office Action, page 5. Second, Applicant directs the Examiner to Col. 4, lines 65-67 of the Specification, which state that “it will be appreciated that the height of the supports 22a can be limited to provide a clearance between the rods 36 and the underside 20 of the shelf substantially the diameter of the cans.” Third, as stated above, the Specification supports hanging the shelf from a structure above. *See* Col. 2, lines 54-64. Thus, together these portions of the specification disclose rear loading of the shelf, a clearance for loading of cans into the shelf, and hanging the shelf from below another structure. This combination is precisely what is recited in Claims 20, 30, and 33. Further, Applicant submits that one of ordinary skill in the art would recognize that a clearance between the shelf and the structure above would be required to load cans in the rear of the shelf when it is hanging. Applicant respectfully submits that no specialized knowledge would be needed to understand that a clearance of at least the size of the beverage container would be needed to facilitate such loading. Accordingly, Applicant submits that this objection is moot.

As to the objection that the recitation “wherein the first and second pairs of support legs are sized such that beverage containers can fit between the beverage support surface and the second crossmember and such that the forward portion hangs lower than the rearward portion when the rack is hanging, by the first and second crossmembers, from said shelf above the rack” of Claims 20 and 30 as not supported by the Specification, Applicant respectfully traverses this objection. The objection is based on the stated grounds that the specification does not provide support for the legs having different lengths *when* the rack is mounted to the underside of a shelf. Applicant respectfully responds that the Specification supports both the shelf being hung and having support legs of different lengths. *See* col. 2, lines 56-64 (stating that rack may be hung); col. 3, lines 2-6 (stating that the legs may have unequal lengths). Together, these portions of the Specification thus provide support that the legs may have equal lengths when the rack is hung. This is precisely what is recited in Claims 20 and 30. Applicant thus respectfully submits that this objection is moot.

With regard to the stated concern that the support legs 22a illustrated in Figure 1 appear to be the same length and therefore would interfere with mounting of the rack and the rolling of a beverage container toward the front, Applicant respectfully responds that the drawing are

Appl. No. : **09/847,759**
Filed : **May 2, 2001**

schematic in nature only and are not necessarily to scale. Applicant submits that MPEP has long allowed Applicants to illustrate components schematically. Thus, Applicant submits that the present objection is moot.

The Claims Fully Comply With 35 U.S.C. § 112

Claims 1-16, 20, 22-24, 26-35, 56, 57, and 59-61 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Applicant respectfully traverses the present rejection. However, in order to expedite prosecution of the present Application, Applicant has amended the claims solely to make these claims more easily readable and not to narrow or affect the scope of the claims.

In Response to the rejection of Claim 1 based on the recitation “the front rod member . . . defining a first plane” on lines 11-12 of Claim 1, Applicant respectfully traverses. Figures 1 and 6 illustrate that the first panel member 10e and second panel member 10f curve downward about rod members 10a and 10c, thereby “defining a first plane” with the front rod member 10a and the at least one other rod member 10b, 10c. Accordingly, Applicant respectfully submits that the claim is not indefinite and requests withdrawal of this rejection.

With regard to the rejection of Claim 1 based on the phrase “a projection of the front rod member” on line 20 of Claim 1, Applicant has amended Claim 1 to no longer include this phrase. Claim 1 now recites “the portion of the framework (22b) that extends at least forward of the front rod member.” Accordingly, Applicant respectfully submits that the current rejection is moot.

In response to the rejection of Claim 5 based on the recitation of “a front rod like member” on line 3 of Claim 5 as being unclear whether the Applicant is referring to the front rod member, Applicant has amended the claim to recite “the front rod member.” Thus, Applicant submits the current rejection is moot.

As to the rejection of Claim 5 due to the recitation such as “like” on line 3 of Claim 5, while Applicant does not agree that this word renders the claim indefinite, to expedite prosecution of this Application, Applicant has amended Claim 5 to remove references of “like.” Thus, Applicant submits that the current rejection is moot.

With regard to the rejection of Claim 9 due to recitations such as “whereby to carry indicia” on line 2 of Claim 9 on the stated grounds that it is unclear what element the Applicant is

Appl. No. : **09/847,759**
Filed : **May 2, 2001**

referring to, without addressing the merits of the rejection, to expedite prosecution Applicant has amended Claim 9 to recite “whereby the front panel is configured to carry indicia.” Thus, Applicant respectfully submits that the element carrying the indicia is clear and definite, so the current rejection is moot.

With regard to the rejection of Claim 20 for recitations such as “the upper ends” on line 10 and “the shelf” on line 19 as lacking antecedent basis, Applicant has amended Claim 20 to recite “a first pair of support legs having upper ends,” thus providing antecedent basis for the term “upper ends” on line 10. Applicant has also amended Claim 20 to replace the phrase “between a rear portion of the shelf and” with “into,” thus removing the term lacking antecedent basis. Support for this amendment is found at least at column 4, lines 60-67. Thus, Applicant respectfully submits the current rejection, based on a lack of antecedent basis, is moot.

As to the rejection of Claim 29 due to the recitation of “an upper surface” on lines 2-3 of Claim 29, because it is unclear whether the Applicant is referring to the container support surface set forth above in the claim, Applicant respectfully traverses. Applicant submits that, in the context of the claim, the term “upper surface thereof” clearly refers to the upper surface of the wire frame. Nonetheless, to expedite prosecution Applicant has amended this claim to recite “an upper surface of the wire frame.” Applicant thus respectfully submits that the current rejection is moot.

With regard to the rejection of Claim 30 based on the recitation “configured to hang” on line 12 of Claim 30 as being unclear whether the first crossmember actually hangs on the shelf, Applicant respectfully traverses. Without addressing the merits of the rejection, to expedite prosecution, Applicant has replaced the term “configured to hang” with “hanging.” Applicant submits this amendment makes perfectly clear the relationship of the crossmembers and the shelf. Accordingly, Applicant respectfully submits the current rejection is moot.

With regard to the rejection of Claim 30 for the recitation of “beverage containers” on line 15 of Claim 30 as unclear whether the Applicant is referring to the beverage containers set forth above in the claim, Applicant has amended line 15 of the claim to recite the phrase “the plurality of beverage containers,” which has antecedent basis in line 5 of the claim. Thus, Applicant submits that the current rejection is moot.

Appl. No. : **09/847,759**
Filed : **May 2, 2001**

As to the rejection of Claim 56 for the recitation of “the first frame” on line 6 of Claim 56 for a lack of antecedent basis, Applicant has amended the claim to recite “the first plane,” which has antecedent basis on line 4 of the claim. Accordingly, Applicant submits the current rejection is moot.

With regard to the rejection of Claim 57 for the recitation of “a shelf” on line 13 of Claim 57, Applicant has amended this phrase to recite “a structure.” Support for this amendment may be found on col. 2, lines 56-64. Thus, Applicant submits that the current rejection is moot.

With regard to the rejection of Claim 60 based on the recitation of “the apertures” on line 2 of Claim 60, Applicant has amended Claim 60 to recite “the third and fourth apertures.” Applicant respectfully submits that the rejection is moot.

Lockwood Does Not Anticipate Claims 20, 22, 23, 26, and 29

Claims 20, 22, 23, 26 and 29 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,732,282 issued to Lockwood. Applicant respectfully traverses the present rejection. The rejection is based on the stated grounds that the Lockwood rack comprises a “forward portion that hangs lower than the rearward portion when the rack is hanging, by the first and second crossmembers, from said shelf above the rack.” *See* Office Action, page 9. The rejection defines the Lockwood crossmembers as the top portion of Lockwood members 22 and 26. *See* Office Action, pages 8-9.

Applicant initially submits that Lockwood does not teach a rack that hangs from a shelf above the rack. Lockwood discloses a rack mounted on legs 42, 54 disposed below the rack, wherein the legs latch into receiver holes on a shelf located below the rack. *See* Lockwood, Figure 2; column 3, lines 18-26, 47-51. Lockwood is devoid of any teaching or other disclosure regarding suspending the rack by the top portions of members 22 and 26. In contrast, Claim 20 recites that the rack is “hanging.”

Even if the Lockwood rack was hung by the top portions of members 22 and 26, Applicant submits that the Lockwood rack would not hang in the disclosed shape as claimed. Lockwood Figure 2 shows the top portions of members 22 and 26 as co-planar relative to each other and equally spaced from the bottom support rail 48, on which the items to be dispensed rest. Thus, if the Lockwood rack was suspended by the top portions of members 22 and 26, the rack

would hang level. In comparison, Claim 20 recites a rack with a “forward portion that hangs lower than the rearward portion.”

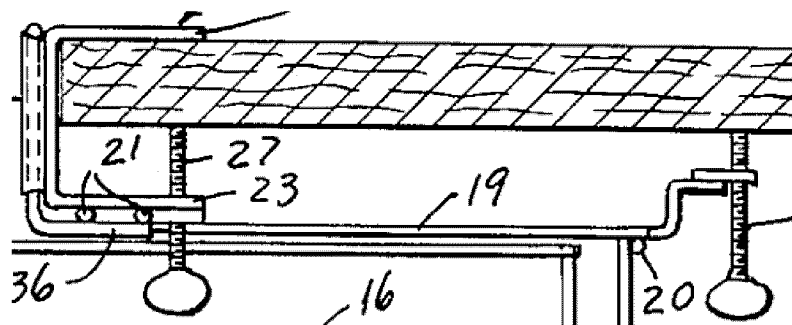
Further, the disclosed shape as claimed is not inherent based on the shape of Lockwood’s legs 42, 54 since, as discussed above, Lockwood does not disclose hanging the rack from above. Moreover, even if the present rejection relies on measurements of the Lockwood drawings, such a rejection would be improper since the Lockwood figures do not state that they are to scale. It is well established that “proportions of features in a drawing are not evidence of actual proportions when drawings are not to scale.” MPEP § 2125.

Accordingly, since Lockwood does not teach a rack that hangs or the disclosed shape, Applicant respectfully submits that Lockwood does not anticipate Claim 20. Therefore, for at least the reasons discussed above, Applicant believes that independent Claim 20 defines of the art of record. Further, Applicant respectfully submits that Claims 22, 23, 26 and 29 are also allowable for at least the reason that these depend from allowable independent based claims. Accordingly, Applicant respectfully submits that these claims are allowable and requests allowance of the same.

Dickson Does Not Anticipate Claim 56

Claim 56 stands rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,007,580 issued to Dickson. The present rejection is based on the stated grounds that the Dickson transverse rod 20 and transverse rods 21—21 define “a first plane configured to support additional shelving above the first plane.” Applicant respectfully traverses the present rejection.

As disclosed in Figure 3 of Dickson, transverse rod 20 and transverse rods 21—21 are above the horizontal rod 19. For the Examiner’s convenience, Applicant has reproduced below a portion of this figure:



Appl. No. : **09/847,759**
Filed : **May 2, 2001**

As shown above, the transverse rod 20 is below the horizontal rod 19, and the transverse rods 21—21 are above the horizontal rod 19. Thus the transverse rod 20 and transverse rods 21-21 are not co-planar, and do not define a “first plane” as recited in Claim 56. Accordingly, for at least the reasons discussed above, Applicant respectfully requests that the rejection of Claim 56 be withdrawn and that this claim indicated as allowable over the art of record.

The Proposed Combination of the Prior Art of the Preamble of Jepsom Claim 1 And Dickson Does Not Make Claims 1-8 Obvious

Claims 1-8 stand rejected under 35 U.S.C. § 103(a) as being obvious over the preamble of Claim 1 in view of Dickson. Applicant respectfully traverses the present rejection. While Applicant reserves the right to prosecute these claims as originally filed, in order to expedite prosecution of the application, Applicant has also amended independent Claim 1 from which Claims 2-8 depend. Applicant has amended Claim 1 to recite that the first panel member extends along “at least a majority” of the front rod member. Support for this amendment is at least in Figures 1 and 6, each of which illustrate a front panel member 10e extending across a majority of the front rod member 10a.

Accordingly, Applicant respectfully submits that Claim 1 defines over the art of record. Further, Applicant respectfully submits that Claims 2-8 are allowable not only based on their own merit, but for at least the reason that they depend from an allowable independent base claim.

The Proposed Combination Of Dickson And Lockwood Does Not Make Claim 57 and 59-61 Obvious

Claims 57 and 59-61 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Dickson in view of Lockwood. Applicant respectfully traverses the present rejection.

The present rejection is based upon the stated grounds that Dickson discloses “a fastener 30 for supporting the rearward portion of the support assembly from a shelf above the support assembly.” *See* Office Action, page 15. Applicant respectfully submits that the Dickson fastener 30 does not support the rack. As shown in Figures 1 and 3 of Dickson, the Dickson rack is supported by a pair of C-shaped brackets 22 arranged “so that the container may be hung upon the shelf by means of the rearwardly extending upper leg 26 of each bracket.” *See* Dickson, col.

Appl. No. : **09/847,759**
Filed : **May 2, 2001**

2, lines 20-27. In contrast, the fastener 30 is provided merely for adjusting the angle of the Dickson rack. *See* Dickson column 2, lines 44-46. In sum, Dickson is devoid of any teaching or disclosure providing a reason to provide a fastener *supporting* the rearward portion of the support assembly.

Moreover, the present rejection is based on grounds that Dickson discloses a shelf in which containers can “be placed onto the rearward portion of the support assembly when the third aperture is connected to a shelf disposed above the support assembly by fasteners.” *See* Office Action, page 15. Applicant respectfully submits that the Dickson device teaches loading containers onto the front of the rack, but not loading onto the rear. Dickson includes coils 17, 18 of resilient material to push objects toward the front of the assembly. *See* Dickson Figure 1; column 3, lines 3-10. Rearward loading of the Dickson assembly would not be possible because the coils are biased to return to the front of the assembly, so would interfere with loading at the rear. Thus, Applicant respectfully submits that Dickson does not teach and does not provide any reason to provide a shelf in which containers “can be placed onto the rearward portion of the support assembly when the third aperture is connected to a shelf disposed above the support assembly by fasteners,” as recited in Claim 57.

Therefore, Applicant respectfully submits that Claim 57 is allowable over the art of record. Further, Applicant respectfully submits that Claims 59-61 which depend from Claim 57 are allowable, not only based on their own merit but for at least the reason that they depend from an allowable independent claim.

Thus, Applicant respectfully submits that the rejection of Claims 57 and 59-61 be withdrawn and that these claims be indicated as allowable over the art of record.

ALLOWED CLAIMS

The Office Action indicates that Claims 14-16 and 30-35 would be allowable if rewritten or amended to overcome the rejections under 35 U.S.C. § 112, second paragraph. Applicant respectfully submits that as discussed above, these claims have been amended and fully satisfy 35 U.S.C. § 112, second paragraph. Accordingly, Applicant respectfully submits that these claims are in condition for allowance and request allowance of the same.

Appl. No. : **09/847,759**
Filed : **May 2, 2001**

SUMMARY

For the reasons described above, Applicant respectfully submits that all of the pending claims are in condition for allowance. Applicant thus respectfully requests the Examiner withdraw the rejection of Claims 1-16, 20, 22-24, 26-35, 56, 57, and 59-61 and pass these claims to allowance.

The undersigned has made a good faith effort to respond to all of the rejections and objections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicant's attorney in order to resolve such issue promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: March 22, 2010

By: /Michael Guiliana/

Michael A. Guiliana
Registration No. 42,611
Attorney of Record
2040 Main Street
Fourteenth Floor
Irvine, CA 92614
Customer No. 20,995
(949) 760-0404

8234872_1
032210